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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 133

GEORGE J. LEEDS, HERMAN J. DONNER AND HARRY LEVINE, EXECUTORS OF THE ESTATE OF ADOLF W. E. B. LEEWITZ, DECEASED,

Petitioners,

vs.

THE UNITED STATES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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JUNE, 1948.

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The petitioners pray that a writ of certiorari issue to review the judgment of the Court of Claims in the above case.

Opinion Below

The opinion of the Court of Claims is reported in 75 Federal Supplement 312.

Jurisdiction

The judgment of the Court of Claims was entered April 5, 1948. The jurisdiction of this Court is invoked

under Section 3(b) of the Act of February 13, 1925 (43 Stat. 939) as amended by the Act of May 22, 1939 (53 Stat. 752).

Question Presented

The estate acquired from the decedent, in 1939, and held during its administration, a period which included all the years of the last war, the stocks of three corporations located in Paris, France, and the stock of one corporation located in Brussels, Belgium. In 1940 the German armies entered and occupied both Paris and Brussels. In 1942 the businesses, properties and values of the four corporations were taken over by the Germans under orders of sequestration issued by their military authorities. After such expropriation, the plant and business of one corporation were completely destroyed and the business of another corporation dependent thereon also was destroyed. The sole question is whether the estate in computing its estate tax is entitled to a deduction under an estate tax section of the Internal Revenue Code which permits deductions for losses "arising from fires, storms, shipwrecks, or other casualties, or from theft." This important question has never been passed upon by this Court. The question is presently a continuing source of litigation between taxpayers and the Commissioner of Internal Revenue under a similar income tax section of the Code. As will be shown, both sections of the Code are to be read together because of their correlation by Congress.

Statutes Involved

The applicable portions of the statutes are set forth in the appendix, pp. 17-20.

Statement

Petitioners are the duly appointed executors of the Estate of Adolf W. E. B. Leewitz, deceased. Adolf W. E. B.

Leewitz died on March 18, 1939, a resident of the City, County and State of New York. On or about June 17, 1940, petitioners filed a Federal estate tax return for the estate of the decedent reporting the property of which the decedent died possessed. Included in Schedule "B" of that return were the following items of property:

Item		
58	Four hundred sixteen shares, Markt & Co. (American Importers) Ltd., an English corporation, with its principal place of business at Brussels, Belgium. 7% Cumulative Preferred, Par Value £1. each, at $4.68 per share	$ 1,946.88
59	Three hundred nine shares, Markt & Co. (American Importers) Ltd., an English corporation, with its principal place of business at Brussels, Belgium. Common, Par Value £3. each, at $14.05 per share	4,341.45
60	One hundred sixteen shares, Produits Jex Societe Anonyme, a French corporation, with its principal place of business at Paris, France. Common, Par Value F. Frs. 1,000. each, at $200. per share	23,200.00
61	Two hundred shares, Markt & Co. (Paris) Ltd., a British corporation, with its principal place of business at Paris, France. Common, Par Value £1. each, at $249.45 per share	49,890.00
62	One hundred sixty-two shares, Nedal Societe Anonyme, a French corporation, with its principal place of business at Paris, France. Common, Par Value F. Frs. 1,000. each, at $21.18 per share	3,431.16
	Aggregate value of Items 58 to 62 inclusive	$82,809.49

The values set out above are those returned to the Commissioner of Internal Revenue and upon which he laid the tax (R. 12, 13).

At a Surrogate's Court held in and for the County of New York, State of New York, on April 24, 1944, the Surrogate signed an order determining the New York State estate tax liability of the decedent. Pursuant to that order, the aggregate value of the items of stock hereinbefore enumerated, namely, $82,809.49 was excluded (R. 14).[1]

At all times hereinafter mentioned the estate was in process of settlement and administration (R. 15).

In the years 1940 and 1941, the armies of Germany overran France and Belgium and occupied those countries. On June 14, 1940, they entered Paris and that city was not liberated until August 25, 1944. On May 15, 1940, they entered Brussels and that city was not liberated until September 4, 1944. December 11, 1941, the United States declared war on Germany (R. 15).

On February 17, 1942, a German sequestrator was appointed for Markt & Co. (Paris) Ltd., and that individual took under his control all the business, properties, and values of that company (R. 15).

On November 19, 1942, a German sequestrator was appointed for Markt & Co. (American Importers) Ltd., Brussels, Belgium, and that individual took under his control all the business, properties, and values of that company (R. 15-16).

Prior to the German occupation and the issuance of these orders of sequestration, these two corporations were engaged in the business of importing merchandise chiefly from the United States. This part of the business was cut off entirely during the period of the occupation and their business declined drastically (R. 16).

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[1] Section 249-s(1) of the New York State Tax Law permits deductions for "losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft * * *". This wording is identical with that of Section 812(b) of Internal Revenue Code, *infra*.

June 20, 1942, a German sequestrator was named for the Nedal Societe Anonyme who took over the business, properties, and values of that company. July 2, 1942, a German sequestrator was named for the Produits Jex Societe Anonyme who likewise took over the business, properties, and values of that company (R. 16).

The sole business of Nedal Societe Anonyme was the manufacture of steel wool. It was the largest manufacturer of its kind in France. In August, 1942, the Germans, by order of their military authorities, took all the machinery from the Nedal factory and that machinery has not yet been returned. After the machinery was removed, the corporation ceased doing business and has not functioned since that time. Sometime after the order of sequestration and during the war period, the factory was completely destroyed (R. 16).

Produits Jex Societe Anonyme was the sole selling agent of Nedal Societe Anonyme and that constituted its most important activity. This latter activity was entirely cut off on the removal of machinery from the Nedal plant and the principal business of Produits Jex Societe Anonyme was destroyed (R. 16).

Neither petitioners nor the estate carried any insurance against losses resulting from the war nor against expropriation or sequestration, nor were the losses claimed in this action compensated for by insurance or otherwise (R. 16).

Neither petitioners, as executors of the estate, nor the beneficiaries of the estate have at any time claimed as a deduction for income tax purposes in any income tax return an amount representing these claimed war losses or any part thereof (R. 17).

On or about April 6, 1943, petitioners filed a claim for refund to recover the portion of estate tax paid on the values of the stocks included in the estate tax return (R. 17).

On January 17, 1945, the Commissioner disallowed such claim and this action followed (R. 17).

Specification of Error to Be Urged

The Court of Claims erred in holding that the petitioners, in determining the estate tax, are not entitled to deduct the returned values, or any part thereof, of the stocks of the four corporations in France and Belgium whose properties and businesses were sequestered by the German military authorities or whose values were otherwise destroyed during the war.

Reasons for Granting the Writ

(1) *The war losses claimed arose out of "casualties" within the meaning of the statute entitling the estate to a deduction. The statute does not limit the allowance to losses of physical property. The majority decision of the Court below and the Second Circuit Court's opinion in Shearer v. Anderson, infra, are in conflict in that respect.*

Section 812(b) of the Internal Revenue Code (*infra*, pp. 19-20) allows deductions in computing estate taxes for "losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft" when such losses are not compensated by insurance or otherwise and when they have not been claimed for income tax purposes.

Section 23(e)(3) (*infra*, p. 17) allows in computing income taxes similar losses when not compensated by insurance or otherwise and when they have not been claimed as a deduction for estate tax purposes.

The only case which has been decided under the loss provisions of Section 812(b), as far as can be ascertained, is *Lyman, et al., Executors* v. *Commissioner of Internal Revenue*, 83 Fed. (2d) 811 (C. C. A.-1st) (1936). In that

case the taxpayer claimed that England's going off the gold standard was a casualty within the meaning of the act then in force (the portion of the act interpreted, Sec. 303 of the Revenue Act of 1926, is in all material respects the same as the corresponding portion of Sec. 812(b)), and that the values of securities included in the estate tax return were thereby seriously affected and that the resultant losses should be allowed as due to a casualty. This rather tenuous claim was rejected by the court.

The court's discussion of the law, especially its emphasis on the rule of *ejusdem generis* as an aid to the interpretation of the section, is to be read in the light of numerous administrative rulings and court decisions interpreting the same words in Section 23(e)(3). Since the deduction for losses by like provisions of Sections 812(b) and 23(e)(3) is made mutually exclusive, the administrative and judicial interpretation of Section 23(e)(3) applies with equal force to Section 812(b). *1 Paul, Federal Estate and Gift Taxation, Sec. 11.28.*

The early rulings of the Commissioner of Internal Revenue reflected a tendency to construe narrowly provisions similar to Section 23(e)(3) in prior tax statutes and to limit the application of the term "other casualty" to losses due to natural forces. In 1924, for example, the Commissioner ruled (*I. T. 2037, III-1 CB 146*) that a loss from a bomb explosion which wrecked a dwelling was not deductible. In 1926 the United States District Court for the Southern District of New York in the case of *Shearer* v. *Anderson*, 13 Fed. (2d) 258, upheld the Commissioner in his disallowance of a loss resulting from damage to taxpayer's automobile when it overturned on an icy roadway. The taxpayer appealed and the Circuit Court reversed (*Shearer* v. *Anderson*, 16 Fed. (2d) 995 (C. C. A.-2d) (1927)). Discussing the rule of *ejusdem generis*, upon which the lower court and the Commissioner relied, the court said:

"We find no basis, however, in the words or history of the act for such a limitation; on the contrary, as 'casualty' expresses rather the result than the cause of the damage, that is, the wreck itself rather than the lightning, storm, or the negligence or fault of some person, so the 'other casualty' is at least as clearly ejusdem generis with shipwreck as with fire or storm.

"Shipwreck does not mean complete loss, damage to the ship suffices. Nor need such damage be caused by storms or other natural causes; the word is without limitation. • • •"

The impact of this decision on the Commissioner was felt immediately in the relaxation of the strictness with which his former rules interpreted the law. Soon after the Circuit Court of Appeals rendered its decision he promulgated ruling *G.C.M. 1802, CB VI-1, page 219 (1927)*, announcing that his bureau would follow it, and in pursuance of this announced policy he recommended the revocation of several old rulings, (*O.D. 629 and O.D. 857*) as well as all other rulings, inconsistent with the decision. This was carried out by *I.T. 2363, CB VI-1, page 220 (1927)*. In 1941 he ruled that the loss of personal property located in a residence which was destroyed in 1940, as a result of bombardment of a city in France, was deductible under Section 23(e)(3), *I. T. 3519, 1941-2 CB 96* specifically modifying an earlier inconsistent ruling *(I. T. 2037, supra)*.

The development of the law as to these losses and the Shearer decision seem clearly to contradict the views of the majority opinion of the court below that losses which are allowable for estate tax purposes are "losses from which no recovery would ordinarily be expected, such as from fires or storms and that the losses have reference to destruction or damage to physical property" (R. 20). Were these views to prevail there would be a reversion to the Commissioner's narrow construction of the statute prior to

the Shearer decision by the Circuit Court. The majority decision below and the Shearer decision are irreconcilable.

It hardly was to be doubted that if losses were allowable under Section 23(e)(3) for damages to automobiles, by collision or otherwise, or to dwellings, or other property, through explosion of bombs, or bombardment, that damage resulting from the devastation of war certainly would be. The answer was supplied by the case of *Eugene Houdry*, 7 T. C. 666 (1946), acquiesced in, significantly, by the Commissioner (1947-2-12473). The Tax Court held that an alien resident in the United States, whose French citizenship was abrogated in May, 1941, by the Vichy Government, and who thereby lost an interest in realty situated in occupied France, was entitled to a deduction for this loss. It is to be observed that this was not a business loss, nor was it one, in the language of the Court below, "from which no recovery would ordinarily be expected such as from fires or storms" (R. 20).

It appears from the Tax Court's findings of fact that Houdry's loss of French citizenship in May of 1941, under the decree of the Vichy Government, gave rise to confiscation of his property by the Vichy Government shortly thereafter. Subsequent to this seizure, and during 1941, the German authorities asserted their right to the property because Houdry was a non-resident. Legal action followed as a result of the dispute between the German and French authorities, which was pending when the war ended. The Commissioner challenged the loss under Section 127 (*infra*, p. 17) because ownership of the property at December 11, 1941, must be proved according to his regulations, a condition which apparently did not exist in the *Houdry* case but does exist in the case at bar. The Tax Court, in meeting this challenge, said:

> "But the conceded loss of the property—its worthlessness due to expropriation—occurred in the one

month or the other of the same year, 1941. If Section 127 is applicable, it was on December 11, 1941, the day this country declared war on Germany, which was then in control of the locality where the property lay. *Robert E. Ford*, 6 T. C. 499. If not, the loss was sustained in May of the same year, under *United States* v. *White Dental Mfg. Co.*, 274 U. S. 398, unless the doctrine of that case has been abrogated by the all-embracing intervention of the war loss provisions.

"Certain aspects of the legislation do, indeed, lend themselves to that interpretation. • • •

"If respondent is correct, however, there was no intention to have the legislation apply to losses occurring prior to December 7, 1941. So approached, the presumption of destruction on the date of American entry into the war is not irrebuttable, nor in fact applicable, if the facts show that the property had been destroyed or seized, even by a subsequent enemy, prior thereto. But that would merely mean that Congress intended no reference, affirmative or negative, to other losses. It may not be taken to show that a loss not covered by the section has, if otherwise deductible, been forbidden. Stated differently, the very scope attributed by respondent to the war loss treatment negatives any assumption that it was intended to be exclusive, or to apply as a bar to circumstances not embraced within its terms. And nothing in the remaining provisions or the legislative history indicates otherwise.

"If, as a consequence, respondent's interpretation is correct, the loss is nevertheless deductible under general principles of long standing. Petitioner was not required to assume the risk of successful termination of the war and the possible restoration of the confiscated property. *United States* v. *White Dental Mfg. Co., supra.* We accordingly refrain from passing upon the precise applicability to the present facts of Section 127, and find it sufficient to conclude that in any event the deduction should have been allowed."

The petitioners, in the case at bar, claim the loss pursuant to the provisions and underlying principles of Section 812(b), relying heavily on the interpretations accorded Section 23(e)(3) by the Commissioner and the courts and on the doctrine of the *White Dental Mfg. Company* case, upon which the Tax Court relies solely. No comment is more apt than this Court's celebrated statement in that case that:

> "The quoted regulations, consistently with the statute, contemplate that a loss may become complete enough for deduction without the taxpayer's establishing that there is no possibility of an eventual recoupment. It would require a high degree of optimism to discern in the seizure of enemy property by the German government in 1918 more than a remote hope of ultimate salvage from the wreck of the war. The taxing Act does not require the taxpayer to be an incorrigible optimist."

Petitioners claim that Section 127 made universally applicable to all taxpayers who suffered war losses the doctrine of the *White Dental* case and was not intended to, nor did it, supersede Section 23(e)(3) *(Houdry, supra)*.[2]

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[2] In the annotation to Section 127 in Commerce Clearing House's Federal Tax Service there is the following comment:

> "The difficulties inherent in the problem of the proof of war losses are illustrated by the fact that, of a total of the first seven cases in which war loss deductions were sought under the provisions of Code Sec. 127, the standard of proof has been met in only two, and in one of these it was met on only one of four items claimed by the taxpayer to be deductible. However, in one decision, in which the Commissioner has acquiesced, the deduction was permitted "under general principles," without regard to the applicability of Sec. 127, on the authority of a U. S. Supreme Court decision (*U. S.* v. *S. S. White Dental Mfg. Co.*, 274 U. S. 398) involving a loss which occurred during World War I (before the adoption of Sec. 127). On the strength of discussion by the Tax Court in the Houdry case and the failure of that court to consider deduction of losses (under Code Sec.

Under Section 127 investments referable to destroyed or seized property are allowed as losses notwithstanding the fact that such investments have a value "if such value is attributable solely to the possibility of the recovery of the property". This is a mere paraphrase of this Court's holding in the *White Dental* case.

(2) *Section 812(b) and 23(e)(3) are in pari materia and are to be construed together.*

The estate, in the case at bar, has exercised its election to take the deduction for estate tax purposes under Section 812(b) for only thus may it recapture the full tax it paid. Deduction for income tax purposes would not have made it whole. Fiduciaries, properly aware of their option, could do nothing else. Had the estate taken the deduction for income tax purposes the Commissioner would have had to allow it under Section 23(e)(3) with or without Section 127 *(Houdry, supra)*. The petitioners submit that he may not act differently under Section 812(b).

It is most fitting to say here what this Court said in the case of *Merrill* v. *Fahs*, 324 U. S. 308 (1945), when the Commissioner attempted to interpret the same phrase in the Gift and Estate Tax Laws in different ways:

> "We believe that there is every reason for giving the same words in the gift tax the same reading. Correlation of the gift tax and the estate tax still requires legislative intervention. *Commissioner of Internal Revenue* v. *Prouty (CCA 1st) 115 F. (2d) 331, 337, 133 ALR 977; Warren, Correlation of Gift and Estate Taxes (1941) 55 Harvard L. Rev. 1; Griswold, a Plan for the Coordination of the Income, Estate and Gift Tax Provisions (1942) 56 Harvard L. Rev.*

23(e)) and of war losses (under Code Sec. 127) to be mutually exclusive, it is clear that a taxpayer may deduct the amount of a war loss under either category, assuming that he proves the loss" (483 CCH Par. 950M.02).

> *337.* But to interpret the same phrases in the two taxes concerning the same subject matter in different ways where obvious reasons do not compel divergent treatment is to introduce another and needless complexity into this already irksome situation."

There is more than reason, there is a duty, to interpret consistently the same phrases in the estate tax law and the income tax law, in the case at bar, because Congress did intervene to correlate the two forms of taxes insofar, at least, as losses are concerned. Integration, to this extent, of the income and estate tax should be made effective; it should not be weakened.

(3) *The possibility of recovery of property or the actual recovery of property may not be considered as denying the loss the statute allows. The majority opinion seriously misconceives the effect of such recovery on the revenues.*

The majority of the Court below was influenced by the fact that "there is no chance for adjustment in another estate tax return in the event that there should be some recovery" (R. 20). This is not necessary. The law deals differently with the situation in estate tax proceedings. The allowance of the loss for estate tax purposes reduces to zero the tax basis of the property in the hands of the estate or a beneficiary (Sec. 113(a)(5)). Upon future disposition of the property, or the part ultimately recovered, a tax is asserted on the complete proceeds. The tax, therefore, is not lost but postponed. There is nothing exceptional in postponement of taxes. The law permits it in many instances, *e.g.,* Section 112 of the Internal Revenue Code. Section 812(b), by its own terms, refutes the idea that such possibility of recovery prevents the deduction of a loss. It is to be observed that among the losses enumerated by Section 812(b) are those from theft.

Certainly these are not always beyond the possibilities of recovery. Only the niceties of language forbid the proper characterization, as theft, of the spoliation of the property of *Nedal Societe Anonyme* by the monstrous cabal controlling the German government and military and the expropriation of the businesses and properties of the other three corporations.[3]

(4) *Judge Littleton's dissent.*

Judge Littleton is of the opinion (R. 23) that the estate's loss of the values of the stocks of Nedal, whose plant and business were destroyed, and of the stock of Jex, selling agents for Nedal, whose business was also destroyed, should be allowed under the facts set out in the Court's findings 9 and 10 (R. 16-17). The proof of loss and the loss itself, in these two instances, were complete and the denial of the loss by the majority in these two instances results in a harsh, narrow and impractical interpretation of Section 812(b). Petitioners feel strongly that this section,

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[3] The Government brief, in the Court below, in meeting this argument, says this:

> "The question of how any recovery would be treated either to the estate or to the legatees, if distribution has been made to them, is not provided for by the statute. Plaintiffs contend, apparently to forestall this argument, that the basis for any later recovery would be a zero basis. We agree with plaintiffs that this should be so, if they should prevail in this case upon the ground that Section 127 is controlling but the correctness of this position is somewhat doubtful."

Petitioners position as to Section 127 is that it amplifies what Sec. 23(e)(3) always allowed. The Houdry decision and the Commissioner's acquiescence in it puts this beyond doubt. The majority opinion of the Court below, insofar as it seeks to restrict the loss provisions of Section 812(b) to losses "from which no recovery would be expected, such as from fires or storms" is in conflict with the opinion of the Tax Court in the Houdry case and therefore with the views of the Commissioner who acquiesced in it. The Court below does not advert to the Houdry case in its opinion although petitioners' brief pointed out its importance and thoroughly discussed it.

especially the portion providing for deductibility of losses, should be liberally construed. Estate taxation differs from income taxation. It is, in its effect, a capital levy. The government takes a share of the property accumulated over a lifetime, a large share where great wealth is left, a small share where a small competence is left, to a family. It seems to petitioners that the courts should be most zealous in seeing that the government does not take a share of the value of an estate unless it clearly exists. If an estate suffers a bona fide loss the government should share that loss. This may make all the difference between the solvency or insolvency of an estate. The Court below concedes that a loss was suffered but concludes that "a mere reduction in stock is very different from a loss which would arise from destruction of, or damage to, property by fire, storm or shipwreck and is therefore clearly not allowable as a deduction" (R. 20-21). The loss to an enemy during war of control of a corporation, the destruction during war of a plant or business of a corporation, is just as surely a loss to a stockholder and may just as surely bankrupt an estate and a family dependent on it.

This Court, and others, have declared that taxation is "an intensely practical matter." (*Farmers Loan & Trust Company, Executors* v. *Minnesota*, 280 U. S. 204 (1930); *Paxson* v. *Commissioner of Internal Revenue*, 144 Fed. (2d) 772 (1944). In no field is it more necessary to be practical than in estate taxation since that form of taxation is asserted frequently against those least able to cope with complicated business affairs or to pursue remedies of their grievances through the courts.

An estate of a decedent, who died after war was declared on Germany, owning property, or securities referable to property, in France or Belgium, while these countries were occupied by the Germans, undoubtedly would

report such property at zero on its estate tax return. The government hardly could contend that such decedent's estate should be subjected to tax on values which might never be realized by those to whom the property was left. Indeed, if the property or the securities were the only assets in such decedent's estate, it is hard to see how it could pay any tax. Certainly nobody would lend on such property. If this much be conceded it is submitted that there is nothing intensely practical in demanding that an estate, which has lost similar values during its administration, should pay a tax thereon because death struck sooner.

This Court said:

> "• • • laws in respect of taxation should be construed and applied with a view to avoiding, so far as possible, unjust and oppressive consequences" *(Farmers Loan & Trust Company, Executors* v. *Minnesota, supra).*

The Court below said:

> "In the construction of statutes common sense must at times be applied, and the facts in this case "lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms." (*S. S. White Dental Mfg. Co.* v. *U. S.*, 61 Ct. Cl. 143 (1925), affirmed, *supra.*)

Conclusion

It is respectfully submitted that, for the reasons stated, this petition for a writ of certiorari should be granted.

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June, 1948.

APPENDIX

Internal Revenue Code:

SEC. 23. In computing net income there shall be allowed as deductions:

• • • • • • •

(e) *Losses by individuals.*—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise——

• • • • • • •

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwrecks, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return."

SEC. 127. *War losses.*

(a) *Cases in which loss deemed sustained, and time deemed sustained.*—For the purpose of this chapter——

(1) *Property not in enemy countries.*—Property destroyed or seized on or after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in the present war shall be deemed to have been destroyed or seized on a date chosen by the taxpayer in the manner provided in paragraph (4), which falls between——

(A) the latest date, as established to the satisfaction of the Commissioner, on which such property may be considered as not destroyed or seized, and

(B) the earliest date, as established to the satisfaction of the Commissioner, on which such property may be considered as having already been destroyed or seized.

For the purposes of this paragraph property within an area which comes under the control of a country

at war with the United States after the date war with such country is declared by the United States shall be deemed to have been destroyed or seized in the course of military or naval operations by such country, and the date specified in subparagraph (A) shall not be later than the latest date determined by the Commissioner as the date on which such area was under the control of the United States or a country not at war with the United States, and the date specified in subparagraph (B) shall not be later than the earliest date determined by the Commissioner as the date on which such area may be considered under the control of the country which is at war with the United States.

(2) *Property in enemy countries.*—Property within any country at war with the United States, or within an area under the control of any such country on the date war with such country was declared by the United States, shall be deemed to have been destroyed or seized on the date war with such country was declared by the United States.

(3) *Investments referable to destroyed or seized property.*—Any interest in, or with respect to, property described in paragraph (1) or (2) (including any interest represented by a security as defined in section 23 (g) (3) of section 23 (k) (3)) which becomes worthless shall be considered to have been destroyed or seized (and the loss therefrom shall be considered a loss from the destruction or seizure) on the date chosen by the taxpayer which falls between the dates specified in paragraph (1), or on the date prescribed in paragraph (2), as the case may be, when the last property (described in the applicable paragraph) to which the interest relates would be deemed destroyed or seized under the applicable paragraph. This paragraph shall apply only if the interest would have become worthless if the property had been destroyed. For the purposes of this paragraph, an interest shall be deemed to have become worthless notwithstanding the fact

that such interest has a value if such value is attributable solely to the possibility of recovery of the property, compensation (other than insurance or similar indemnity) on account of its destruction or seizure, or both. Section 23 (g) (2) and (k) (2) shall not apply to any interest which under this paragraph is considered to have been destroyed or seized. * * *

(c) *Recoveries included in gross income.*—

(1) *General rule.*—Upon the recovery in the taxable year of any money or property in respect of property considered under subsection (a) as destroyed or seized in any prior taxable year, the amount of such recovery shall be included in gross income to the extent provided in paragraph (2).

SEC. 812. *Net Estate.*

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * * * *

(b) *Expenses, Losses, Indebtedness, and Taxes.* Such amounts—

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate,

(4) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

(5) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the

estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.

(7204)